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OFFICE OF PETITIONS

In re Application of :
Francke et al. :
Application Number: 10/559158 : ON PETITION
Filing Date: 03/28/2006 :
Attorney Docket Number: :
10034.540 :

This is a decision on the petition filed under 37 CFR 1.137(b)¹ on September 10, 2009, which, in view of petitioner's statement that the Office action of January 26, 2009 was sent to the wrong address, is first treated as a petition to withdraw the holding of abandonment.

The petition to withdraw the holding of abandonment is **GRANTED**.

The petition under 37 CFR 1.137(b) is **DISMISSED AS MOOT**.

This application was held abandoned on April 27, 2009, for failure to timely file a response to the non-final Office action

¹ Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition filed under the provisions of 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof. In an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Director may required additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

mailed on January 26, 2009, which set a three (3)-month shortened statutory period for reply. Notice of Abandonment was mailed on August 17, 2009.

On September 10, 2009, the subject petition was filed, accompanied by an amendment in reply to the last Office action.

Petitioner's counsel notes that a Change of Correspondence Address, signed by applicant's attorney, was filed on November 10, 2008, but that the Office action mailed on January 26, 2009, was mailed to the prior correspondence address. Petitioner asserts, in pertinent part, that "[t]he delay in filing a reply as referenced in the Notice of Abandonment, therefore, appears to be a Patent Office error, and not of Applicants or Undersigned Counsel, and this application should be revived at no cost to Applicants."

Upon review, a change of correspondence address signed by applicants' registered patent practitioner, Jeffry W. Smith, was filed on November 10, 2008. The Office action mailed on January 26, 2009, however, was not mailed to the address indicated in the change of correspondence address filed on November 10, 2008.

As such, the showing of record is that the Office action mailed on January 26, 2009, was not received because it was not mailed to the correct address.

The holding of abandonment is vacated, and the Notice of Abandonment is withdrawn.

As the holding of abandonment is withdrawn, the application is not abandoned, and the petition under 37 CFR 1.137(b) will be dismissed as moot. The petition fee will be credited to counsel's deposit account.

As a reply to the non-final Office action mailed on January 26, 2009 was filed with the subject petition, remailing of the subject Office action is not necessary.

The application will be referred to Technology Center Art Unit 3644 for further processing.

Application No. 10/559158

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Telephone inquiries related to this decision should be directed to the undersigned at 571-272-3231.

A handwritten signature in cursive script, appearing to read "D. Wood".

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions